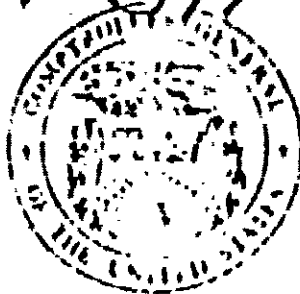


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DECISION



Eaton

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20546

21086

FILE: B-204233

DATE: March 8, 1982

MATTER OF: Ven-Tel, Inc.

DIGEST:

When protester alleging that brand name or equal specifications are unduly restrictive takes exception to requirement and submits bid in which price for non-equal equipment is not low, GAO will not consider matter, since even if protest were sustained, protester would not be in line for award.

Ven-Tel, Inc. protests what it alleges are unduly restrictive specifications in invitation for bids No. 81-S0211, issued by the Department of Interior's Bureau of Reclamation in Denver, Colorado. We dismiss the protest.

Ven-Tel objects to the agency's requirement for "Racal Vadic Modems,¹ Model 3451 or Equal Stand Alone Units" and to a list of salient characteristics which includes compatability with three Vadic models. The protester argues that these provisions restrict competition to a single manufacturer or its licensees and prevent a sizable portion of the modem industry from bidding.

The Bureau of Reclamation, on the other hand, states that the specifications accurately reflect its needs for operation of an extensive data network in support of more than 700 computer terminals in 17 Western states. According to the agency, the equipment being procured must be able to communicate with Vadic 3400 series modems which currently are in use, and no other known manufacturer can provide this capability.

¹ A modem is a device which modulates and demodulates signals transmitted over data communications facilities.

Ven-Tel, whose protest to our Office was filed before the August 10, 1981 opening date, submitted a bid in which it took exception to the brand name or equal requirement and instead offered Ven-Tel modems at a unit price of \$730, extended to \$17,520 for the required quantity of 24. Ven-Tel also offered a prompt payment discount of 1 percent/20 days, making its net price \$17,344.80. This was fifth-low among the 13 bids received by the Bureau of Reclamation. Although the low bidder was rejected as nonresponsive, the agency proposes to make award to the second-low bidder, Applied Delta Systems, Inc., whose bid for the brand name equipment was \$695 per unit, \$16,680 extended.

Since Ven-Tel is not the low bidder, we need not decide the merits of this case. Even if we sustained the protest and recommended that the solicitation be amended to permit bids on any manufacturer's equipment, so that Ven-Tel's bid could be considered responsive, the firm would not be in line for award. Therefore, no useful purpose would be served by our considering the matter. See A. B. Machine Works, Inc., B-189094, July 28, 1977, 77-2 CPD 57; cf. International Business Investments, B-202164.2, June 8, 1981, 81-1 CPD 459, holding in a post-award protest that a fifth-low bidder was not an interested party when there was at least one other firm to whom award could be made under the invitation.

The protest is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel